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Attorneys for Defendant
RAMESH "SUNNY" BALWANI

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

HOLMES, et al.,

Defendant.

Case No. 18-CR-00258-EJD

**DECLARATION OF JEFFREY B.
COOPERSMITH IN SUPPORT OF
MOTION TO DISMISS SECOND AND
THIRD SUPERSEDING
INDICTMENTS BASED ON PRE-
INDICTMENT DELAY**

Date: October 6, 2020
Time: 10:00 a.m.
Judge: Honorable Edward J. Davila
Crm: 4, 5th Floor

DECLARATION OF JEFFREY B. COOPERSMITH

I, Jeffrey B. Coopersmith, declare as follows:

1. I am lead counsel for defendant Ramesh “Sunny” Balwani in this case, an attorney admitted to practice in the State of California, and a partner at the law firm of Orrick, Herrington & Sutcliffe LLP. I submit this declaration in support of Mr. Balwani’s Motion to Dismiss the Second and Third Superseding Indictments. I have personal knowledge of the facts stated herein, and I could and would testify competently to those facts if called as a witness.

2. Attached as **Exhibit A** is a true and correct copy of the July 2010 agreement formalizing Theranos’s business partnership with Walgreens.

3. Attached as **Exhibit B** is a true and correct copy of the FBI’s July 12, 2016 receipt of Walgreens’ production in response to a January 29, 2016 grand jury subpoena.

4. Attached as **Exhibit C** is a true and correct copy of the February 26, 2016 SEC interview memorandum of Walgreens General Counsel Jan Reed.

5. Attached as **Exhibit D** are true and correct copies of the cover pages¹ of transcripts from SEC testimony of the following Walgreens executives: (1) Wade Miquelon on August 16, 2016; (2) Jay Rosan on April 19, 2017; (3) Nimesh Jhaveri on May 23, 2017.

6. Attached as **Exhibit E** is a true and copy of (1) a January 11, 2016 email from the SEC to Adam Reeves; (2) a March 24, 2016 FBI Form FD-1057.

7. Attached as **Exhibit F** is a true and correct copy of FBI Form FD-302 memorializing the government’s interview of Nimesh Jhaveri on October 22, 2019. Mr. Balwani has not received any other documents memorializing any government interviews of Walgreens executives that post-date October 22, 2019.

8. Attached as **Exhibit G** is a true and correct copy of the September 2010 agreement formalizing Theranos’s business relationship with Safeway.

9. Attached as **Exhibit H** is a true and correct copy of FBI Form FD-302, memorializing the government’s interview with Safeway CEO Steven Burd on June 17, 2016, and a transcript from Safeway General Counsel Robert Gordon’s March 31, 2017 SEC testimony.

¹ Mr. Balwani will provide the full transcripts upon request from the Court.

1 10. Attached as **Exhibit I** is a true and correct set of FBI Forms FD-302, memorializing
2 the government's interviews of the following Theranos board members: (1) James Mattis on
3 December 13, 2016; (2) Henry Kissinger on June 13, 2017; (3) Richard Kovacevich on July 27,
4 2017; (4) Channing Robertson on February 26, 2018.

5 11. Attached as **Exhibit J** is a true and correct set of FBI Forms FD-302, memorializing
6 the government's receipt of documents in response to grand jury subpoenas related to the following
7 Theranos board members: (1) Henry Kissinger on February 1, 2018; (2) Richard Kovacevich on
8 April 13, 2018; (3) Richard Kovacevich on May 15, 2018.

9 12. Attached as **Exhibit K** is a true and correct copy of an August 9, 2017 email from
10 FDA Special Agent George Scavdis to FDA personnel Courtney Lias, attaching patient M.E.'s
11 medical records.

12 13. Attached as **Exhibit L** is a true and correct copy of: (1) an October 31, 2017 FDA
13 Memorandum of Interview with Dr. Mark Burnes; (2) Dr. Burnes' Nov. 29, 2017 production of
14 patient M.E.'s laboratory reports in response to a grand jury subpoena. Mr. Balwani has not
15 received a copy of the grand jury subpoena issued to Dr. Burnes.

16 14. Attached as **Exhibit M** is a true and correct copy of FBI Form FD-302,
17 memorializing the government's March 1, 2018 interview of patient M.E.

18 15. Attached as **Exhibit O** are true and correct copies of laboratory reports for patient
19 B.B. The government produced these documents to Mr. Balwani on October 19, 2018.

20 16. Attached as **Exhibit P** is a true and correct copy of: (1) a July 23, 2020 production
21 letter from Assistant United States Attorney Robert Leach to counsel for Ms. Holmes and Mr.
22 Balwani; (2) an August 21, 2020 letter from Assistant United States Attorney Robert Leach to
23 counsel for Ms. Holmes.

24 17. Attached as **Exhibit Q** is a true and correct copy of: (1) a May 15, 2020 letter from
25 Mr. Balwani's counsel to Assistant United States Attorney Jeff Schenk; (2) the government's
26 March 6, 2020 notice of its intent to introduce certain evidence.

27 18. Attached as **Exhibit R** is a true and correct copy of a March 30, 2020 letter from
28 counsel for Mr. Balwani to Assistant United States Attorney Robert Leach.

1 19. Attached as **Exhibit S** is a true and correct copy of a September 30, 2014 email from
2 the FDA regarding a Theranos inspection. The government produced these documents to Mr.
3 Balwani on February 7, 2020.

4 20. Attached as **Exhibit T** is a true and correct copy of: (1) an October 1, 2014 email
5 with only a placeholder document denoting that the attachment was “Intentionally Withheld” by
6 the FDA; (2) the same email with no attachment produced; (3) a September 30, 2014 email
7 attaching “Theranos Inspection Request Clean,” yet no attachment was produced. The October 1,
8 2014 email was produced by the FDA on October 1, 2019. The government produced the remaining
9 documents to Mr. Balwani on October 19, 2018.

10 21. The government’s productions to Mr. Balwani have included, without limitation,
11 the following technical deficiencies: emails missing attachments; families of documents produced
12 as standalone documents without metadata indicating that they are part of a family; multiple
13 unrelated documents produced in a single document; emails and attachments produced as a single
14 document without page breaks at the end of documents.

15 22. Attached as **Exhibit U** is a true and correct copy of: (1) a June 5, 2020 Letter from
16 counsel for Ms. Holmes to Assistant United States Attorneys; (2) July 23, 2020 letter from Assistant
17 United States Attorneys to counsel for Ms. Holmes. Mr. Balwani has yet to receive the “Tranch09”
18 documents in a usable manner.

19 23. Attached as **Exhibit V** are true and correct copies of the cover pages² of transcripts
20 from 13 depositions taken in various civil litigation of witnesses related to these newly-added
21 allegations. Several witnesses were deposed in 2017, transcripts for which the government
22 produced on August 7, 2018. Other witnesses were deposed in 2018, transcripts for which the
23 government produced on March 4, 2020. Additional witnesses were deposed in 2019, transcripts
24 for which the government produced in August and September 2019.

25 24. Attached as **Exhibit W** are true and correct copies of interview memoranda
26 memorializing government interviews with nine witnesses related to these newly-added parties, all
27 of which took place before the government’s original June 2018 indictment: (1) Jan Reed on

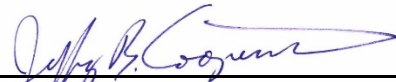
28 ² Mr. Balwani will provide the full deposition transcripts upon request from the Court.

1 February 26, 2016; (2) Steven Burd on June 17, 2016; (3) James Mattis on December 13, 2016; (4)
2 Robert Gordon on March 31, 2017; (5) Henry Kissinger on June 13, 2017; (6) Richard Kovacevich
3 on July 27, 2017; (7) Dr. Mark Burnes on October 31, 2017; (8) Channing Robertson on February
4 26, 2018; (9) patient M.E. on March 1, 2018.

5 Attached as **Exhibit X** are true and correct copies of interview memoranda memorializing
6 government interviews with six witnesses, all of which took place in 2019: (1) Ashley Marie
7 Mackey on June 12, 2019; (2) Jay Rosan on September 20, 2019; (3) Wade Miquelon on October
8 18, 2019; (4) Dan Doyle on October 21, 2019; (5) Kim Romanski on October 21, 2019; (6) Nimesh
9 Jhaveri on October 22, 2019.

10 I declare under penalty of perjury that the foregoing is true and correct.

11 Executed August 28, 2020 at Seattle, Washington.

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14 _____
JEFFREY B. COOPERSMITH